1 In the United States Circuit Court of Appeals
for the Second Circuit

LILLIAN SPELAR, AS ADMINISTRATRIX OF THE ESTATE OF MARK SPELAR, DECEASED, PLAINTIFF-APPELLANT

*v.*

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

*Statement pursuant to rule 13*

This action was commenced in the District Court of the United States for the Eastern District of New York by the filing of the complaint on April 23, 1947. Service, pursuant to the provisions of the Federal Tort Claims Act, was made on or about April 24, 1947.

Plaintiff appeared by Gerald F. Kinley.

Defendant appeared by J. Vincent Keogh, United States Attorney.

There have been no changes in parties or attorneys since the commencement of the action.

The defendant was at no time arrested; no bail has been taken, and no property has been attached.

The defendant moved to dismiss the action on the ground that the Court lacks jurisdiction, as the claim arose in a foreign country, and upon the ground that the complaint failed to state a claim against the defendant upon which relief can be granted; and for such other and further relief as to the Court may seem just and proper.

2 This motion was heard by Honorable Harold M. Kennedy on June 18, 1947.

The decision and opinion the Court granting the defendant's motion is dated February 4, 1948.

On February 25, 1948, an order was signed by Judge Kennedy granting the motion to dismiss the action on the grounds above stated.

The plaintiff's Notice of Appeal is dated February 26, 1948.

3 In the District Court of the United States for the Eastern District of New York

Civil No. 8019

LILLIAN SPELAR, AS ADMINISTRATRIX OF THE ESTATE OF MARK SPELAR, DECEASED, PLAINTIFF

*v.*

UNITED STATES OF AMERICA, DEFENDANT

ACTION AT LAW UNDER FEDERAL TORT CLAIMS ACT

*Complaint*

Plaintiff, for her cause of action against the defendant herein, by and through her attorney, Gerald F. Finley, alleges:

First: That at all times herein mentioned, the defendant was and is a Sovereign Corporation.

Second: That at all times herein mentioned the plaintiff was and still is a citizen of the State of New York residing in the Borough of Queens in the City of New York, within the limits of jurisdiction of the District Court of the United States for the Eastern District of New York.

Third: That at all times herein mentioned the defendant leased, maintained and controlled a certain air base known as Harmon Field in or near Stephenville, Newfoundland.

4 Fourth: That at all times herein mentioned the defendant controlled, supervised and directed all take-offs of aircraft from the said Harmon Field.

Fifth: That on and prior to the third day of October, 1946, Mark Spelar, deceased, was in the employ of American Overseas Airlines, Inc., as a Flight Engineer.

Sixth: That on the third day of October 1946, the said Mark Spelar in the course of his duties as an employee of American Overseas Airlines, Inc., was aboard an aircraft known as a DC 4, U. S. Registry No. NC 90904 at Harmon Field, in or near Stephenville, Newfoundland.

Seventh: That on the third day of October 1946 the defendant, its agents, servants, officers and employees negligently and carelessly ordered, directed and supervised the aforesaid aircraft No. NC 90904 in taking off from Harmon Field in or near Stephenville, Newfoundland.

Eighth: That by reason of the negligence of the defendant in ordering, directing and supervising the take-off of the aircraft,

U. S. Registry No. NC 90901, the aforesaid aircraft was caused to crash into a hill or promontory shortly after the said take-off, and as a result thereof, the said Mark Spelar, was caused to suffer and sustain injuries that resulted in his death.

Ninth: That the negligence of the defendant consisted in directing the said aircraft, U. S. No. NC 90901, to take off on Runway 7 at the time and place aforementioned, in spite of the rising terrain in the flight path thereof and the conditions prevailing at the time of the said take-off; in failing properly to warn the said aircraft No. NC 90901 of the dangers involved in taking off from the said Runway 7 at the time and place above-mentioned, in view of the rising terrain in the flight path thereof and the conditions prevailing at the time of the said take-off; in failing to establish and maintain proper beacons, markers, signals, limitations of flight and other safeguards against the dangers of the surrounding terrain; in failing to require the establishment and maintenance of proper beacons, markers, signals, limitations of flight and similar safeguards against the dangers of the surrounding terrain, in failing to place or have placed proper runway restrictions in the Operating Manuals used by flying personnel at the time and place above-mentioned; in failing to provide proper supervision of operations at Harmon Field and competent persons charged with the supervision of operations at the said Harmon Field; and various other negligent and careless acts in the premises.

Tenth: This action is brought under the United States Statutes and the Federal Tort Claims Act and the jurisdiction of this court depends thereupon.

Eleventh: That the laws of Newfoundland provide in Chapter 213 of the Consolidated Statutes of Newfoundland (3d series):

"1. Whensoever the death of a person shall be caused by any wrongful act, neglect, or default, and the act, neglect, or default, such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony.

"2. Every such action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased."

Twelfth: That heretofore, and on or about the 20th day of January 1947, the Surrogate's Court in the County of Queens in the State of New York duly made its certain decree appointing the plaintiff administratrix of all the goods, chattels and credits which were of the said deceased, Mark Spelar, and the plaintiff is now duly qualified and acting as such administratrix.

Thirteenth: That the plaintiff as the wife of Mark Spelar was entirely dependent on the aforesaid Mark Spelar for support from his earnings.

Fourteenth: That at the time of his death the said deceased was a strong, healthy, able-bodied young man, aged 31 years; was a graduate of high school and of the Pittsburgh Institute of Aeronautics and was a trained mechanic and Flight Engineer; that he was earning and capable of earning approximately four hundred and fifty ($450.00) dollars a month and was sober and industrious.

7 Fifteenth: That by reason of the facts alleged herein, the plaintiff individually and in her capacity as administratrix as aforesaid, was, through the negligence of the defendant, caused loss and damage in the sum of one hundred thousand ($100,000) dollars no part of which has been paid.

Wherefore, plaintiff demands judgment against the said defendant for the sum of one hundred thousand ($100,000) dollars together with the costs and disbursements of this action, and that the Court award her attorney reasonable counsel fees and compensation in the prosecution of this action.

GERALD F. FINLEY,
*Attorney for Plaintiff, Office and P. O. Address,*
*545 Fifth Avenue, New York City.*

8 In the United States District Court

*Notice of motion to dismiss*

SIRS: Please take notice that the defendant herein, United States of America, will move this Court at a Term for Motions to be held at the Federal Court House, 271 Washington Street, Brooklyn, New York, in Room 737, on the 18th day of June 1947, at 10:30 a. m. of that day or as soon thereafter as counsel can be heard, for an order:

1. To dismiss the action on the ground that the Court lacks jurisdiction, as the claim herein arose in a foreign country (28 U. S. C. 943 (k));

2. To dismiss the action because the complaint fails to state a claim against the defendant upon which relief can be granted; and

3. For such other and further relief as to the Court may seem just and proper.

Dated: Brooklyn, New York, June 9, 1947.

9 Yours, etc.,

J. VINCENT KEOGH,
*United States Attorney,*
*Attorney for Defendant, Office and P. O. Address,*
*521 Federal Building, Brooklyn, New York.*

To GERALD F. FINLEY, Esq.
*Attorney for Plaintiff,*
*545 Fifth Avenue, New York 17, New York.*

10 In the United States District Court for the Eastern District of New York

Civil 8019—February 11, 1948.

[Same title]

Appearances: J. Vincent Keogh, United States Attorney for defendant for motion (Frank J. Parker, Chief Assistant United States Attorney, of counsel). Gerald F. Finley, attorney for plaintiff.

*Opinion*

KENNEDY, D. J. This suit for wrongful death is based upon the Federal Tort Claims Act (28 U. S. C. A. § 943). Plaintiff is the widow of a deceased employee of American Overseas Airline, Inc. She alleges in her complaint that she is a resident of the Eastern District of New York and that on January 20, 1947, she became administratrix of her husband's estate under letters issued by the Surrogate's Court of Queens County. The plane, on board of which decedent was killed, had just taken off from Harmon Field in or near Stephenville, Newfoundland, on October 3, 1946, the date of the fatal accident. And this accident is said to have been due to the negligence of the defendant. It is also al-

11 leged in the complaint that, under the laws of Newfoundland (Consolidated Statutes of Newfoundland, 3rd Series, Ch. 213), an action for wrongful death is created. Upon this statute plaintiff relies. She says that under the Federal Tort Claims Act she has a right to invoke this statutory law of the place where the accident occurred, even though it is not within the territorial limits of the United States, because at the time of the decedent's death, the government was operating the air base at or near which the plane fell, and that the Federal Tort Claims Act provides that her rights are to be determined by the *lex loci delicti.*

Whether or not the Federal Tort Claims Act applies to this situation depends largely upon whether Harmon Field does or does not answer the description "foreign country," because, while the Federal Tort Claims Act constitutes a waiver of sovereign immunity under certain circumstances, the statute itself specifically bars a recovery on any "claim arising in a foreign country" (28 U. S. C. A. § 943 (k)). The government, urging that all of Newfoundland is obviously a foreign country, moves to dismiss the complaint. The plaintiff opposes the motion on the ground that the locale of the accident, even though in Newfoundland, is not a "foreign country" because it is one of the areas covered by a 99-year lease and executive agreement entered into between the British Government and the United States of America on March 27, 1941 (55 Stat. Pt. 2, 1560–1594).

The agreement and lease of March 27, 1941, to which plaintiff refers, was recently carefully considered and analyzed by Judge Clark in this circuit (Connell v. Vermilya-Brown Company, Inc., 2 Cir., 1947, — F. 2d —, decided November 28, 1947). The Connell case involved a claim under the Fair Labor Standards Act (29 U. S. C. A. § 201) by persons who had done construction work at Fort Bell and Kindley Field Bermuda. That area was embraced within the scope of the same lease and executive agreement which relates to Harmon Field in Newfoundland. The Connell complaint was dismissed in the District Court on the ground that, despite the lease and executive agreement, the leased areas of Bermuda did not constitute a "Territory or possession of the United States" within the meaning of the Fair Labor Standards Act. Judgment of dismissal was reversed in the Circuit Court because the lease and executive agreement were construed to embrace such a far-reaching surrender of sovereignty by Great Britain, and acceptance of control by the United States, as to constitute Bermuda a "possession" within the meaning of the act then under consideration.

Clearly, therefore, Harmon Field, the locale of the accident which gave rise to the claim at bar, is, under the Connell case, a "territory or possession of the United States", within the meaning of the Fair Labor Standards Act. Is it also part of a "foreign country" and exempt from the operation of the Federal Tort Claims Act? The solution of the problem is not much advanced by recourse to semantics. For, as the Supreme Court has recognized, the word "country" in the expression "foreign country" is ambiguous (Burnet v. Chicago Portrait Co., 1932, 285 U. S. 1, 76 L. Ed. 587), and now, by virtue of the acquisition of bases in Bermuda, Newfoundland, and elsewhere, the word "foreign" has itself become for some purposes difficult to define, so that the whole expression "foreign country" has lost much of what clarity

13 of meaning it once had. It has been reduced almost to the level of those chameleonlike symbols which, in some statutes, take color only from their background.

Nor is it easy to define the meaning of the statute for purposes of this motion by attempting to discover and carry out the beneficient purposes which led to the enactment of the law. It is perfectly conceivable that the same Congress which would be willing to make applicable to Newfoundland the spreading of employment (the Federal Labor Standards Act) would be quite unwilling to waive sovereign immunity against all tort claims arising in the same area.

I have said that, under the Counel case, Harmon Field in Newfoundland is a "territory or possession of the United States," certainly where fair labor standards are concerned, but in the Federal Tort Claims Act, the expression "Territories and possessions of the United States" is used only once (28 U. S. C. A. § 931), and there in a context which rules out Harmon Field, because that section of the statute confers jurisdiction upon United States district courts "including the United States district courts for the Territories and possessions of the United States." The leased area in Newfoundland has no such courts. Apart from this, there is nothing that I can find in the Federal Tort Claims Act which gives any clear and specific clue concerning the geographical area to which Congress intended the legislation to be applicable, except, as already mentioned, the exemptions found in one section (28 U. S. C. A. § 943) among which is that of any claim arising in a "foreign country."

It seems to me that I have no recourse except to apply the
14 familiar principle that a Congressional waiver of sovereign immunity is to be narrowly construed. And under any narrow construction of the statute, the expression "foreign country" certainly applies to Newfoundland, and even to areas within it over which the United States exercises many, but not all, of the powers of a sovereign.

The result may seem anomalous, I admit. If plaintiff's intestate had been merely underpaid at Harmon Field, he would have had a remedy because it is a "territory" or "possession." Yet, for his death there, even though negligence be established, his widow is, under my construction of the tort statute, without remedy because it is a "foreign country." Plaintiff's claim would have been good if her husband had been killed during a landing in the United States; it is bad merely because he was killed during the takeoff in Newfoundland.

But it may well be that the anomaly is more apparent than real: that rather than subject the United States to claims justiciable

under foreign law, the Congress felt that such suitors should have a remedy only as a matter of grace, subject to such conditions as the Congress might impose, and not as a matter of right, and that this explains its specific refusal to apply a general statute to a claim arising in a "foreign country."

The complaint is dismissed for want of jurisdiction.

HAROLD M. KENNEDY,
*United States District Judge.*

15 In the United States District Court for the Eastern District of New York

Civil No. 8019

[Same title]

*Order granting motion to dismiss*

The above-named defendant having moved this Court by notice of motion dated June 9, 1947, for an order dismissing the action because the Court lacks jurisdiction, as the claim herein arose in a foreign country (28 U. S. C. A. 943 (k)), and on the further ground that the complaint fails to state a claim against the defendant upon which relief can be granted, and said motion having duly come on to be heard before me on the 18th day of June 1947, and the defendant having appeared by its attorney, J. Vincent Keogh, United States Attorney for the Eastern District of New York, Frank J. Parker, Chief Assistant United States Attorney, of counsel, in support of said motion, and the plaintiff by her attorney Gerald F. Finley, Esq., having appeared in opposition thereto, and upon the decision of the Court, dated February 11, 1948.

Now, on motion of J. Vincent Keogh, United States Attorney for the Eastern District of New York, attorney for the defendant, it is

Ordered, that the motion of the defendant be and the same hereby is granted.

Dated: Brooklyn, New York, February 25, 1948.

HAROLD M. KENNEDY,
*U. S. D. J.*

16 In the United States District Court

[Title omitted]

*Notice of appeal*

Notice is hereby given that the plaintiff above named hereby appeals to the Circuit Court of Appeals for the Second Circuit from the order of Honorable Harold M. Kennedy, entered and filed in the Office of the Clerk of the Eastern District Court on February 25, 1948, which order dismissed the plaintiff's action because the Court lacked jurisdiction, as the claim arose in a foreign country and because the complaint failed to state a claim against the defendant upon which relief could be granted, and the plaintiff appeals from each and every part of said order and any judgment entered or to be entered thereon.

Dated: February 26, 1948.

GERALD F. FINLEY,
*Attorney for Plaintiff-Appellant,*
*551 Fifth Avenue, New York 17, N. Y.*

17 In the United States District Court

*Stipulation as to record*

It is hereby stipulated and agreed that the foregoing is the record of the said District Court in the above-entitled matter, as agreed on by the parties.

Dated: March 19, 1948.

GERALD F. FINLEY,
*Attorney for Plaintiff-Appellant.*
J. VINCENT KEOGH,
*United States Attorney,*
*Attorney for Defendant-Appellee.*

18 [Clerk's certificate to foregoing transcript omitted in printing.]

19 In the United States Court of Appeals for the Second Circuit.

No. 33—October Term, 1948

Argued November 3, 1948—Decided December 8, 1948

Docket No. 21041

LILLIAN SPELAR, AS ADMINISTRATRIX OF THE ESTATE OF MARK SPELAR, DECEASED, PLAINTIFF-APPELLANT

*v.*

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Appeal from the United States District Court for the Eastern District of New York

Before L. Hand, Augustus N. Hand and Clark, Circuit Judges.

Action for wrongful death under the Federal Tort Claims Act by Lillian Spelar, as administratrix of the estate of Mark Spelar, deceased, against the United States of America. From an order dismissing the complaint for lack of jurisdiction, D. C. E. D. N. Y., 75 F. Supp. 967, the plaintiff appeals. Reversed and remanded.

20 ARNOLD B. ELKIND,
*of New York City (Gerald F. Finley, of New York City, on the brief), for plaintiff-appellant.*

FRANK J. PARKER,
*Chief Assistant U. S. Attorney, of Brooklyn, N. Y. (J. Vincent Keogh, U. S. Attorney, of Brooklyn, N. Y., on the brief), for defendant-appellee.*

*Opinion*

CLARK, *Circuit Judge*: Does the exclusion from the coverage of the Federal Tort Claims Act of any "claim arising in a foreign country," 28 U. S. C. A. § 943 (k), Revised Title 28, United States Code, § 2680 (k), prevent recovery from the United States of America for wrongful death occurring on a Government airfield in Newfoundland in an area covered by a 99-year lease and executive agreement as a part of the famous "destroyer deal" between Great Britain and the United States of March 27, 1941? In dismissing this action the district court has held that it does. D. C. E. D. N. Y., 75 F. Supp. 967. We are constrained to disagree.

Plaintiff is administratrix of her husband's estate under letters issued by the Surrogate's Court of Queens County, New York.

Her husband was a flight engineer, an employee of American Overseas Airlines, Inc., who was killed by the crashing of his plane just as it had taken off from Harmon Field, in or near Stephenville, Newfoundland, on October 3, 1946. Compare Spelar v. American Overseas Airlines, Inc., D. C. S. D. N. Y., 80 F. Supp. 344. Plaintiff's complaint alleges that his death was due to the negligence of representatives of the United States and that under the laws of Newfoundland, Consol. Stat. of Newfoundland, 3d Ser., c. 213, an action for wrongful death is
21 created, upon which the plaintiff relies as establishing her claim under the Federal Tort Claims Act. The complaint was dismissed below on the defendant's motion for lack of jurisdiction.

The Act as passed in 1946 gave exclusive jurisdiction to the United States district court for the district wherein the plaintiff was resident or wherein the act or omission complained of occurred, "including the United States district courts for the Territories and possessions of the United States," on claims against the United States for death by the negligent or wrongful act or omission of any Government employee while acting within the scope of his employment under circumstances where the United States, if a private person, would be liable to the claimant for such * * * death in accordance with the law of the place where the act or omission occurred." 28 U. S. C. A. § 931 (a). This is continued in the revision, Title 28, United States Code, § 1346 (b), except that here the district courts are spelled out to designate those of Alaska, the Canal Zone, and the Virgin Islands. Since obviously the revision was not intended to limit the coverage, the reference to the original form is of importance, as indicating a congressional recognition of claims in the "possessions" of the United States.

The nature of the 99-year lease and executive agreement entered into between Great Britain and the United States, as set forth in 55 Stat., Pt. 2, 1560-1594, is discussed at some length in Connell v. Vermilya-Brown Co., 2 Cir., 164 F. 2d 924, where we held that the Bermuda base transferred pursuant to this same agreement was a "possession" of the United States within the applicability of the Fair Labor Standards Act. Since the argument of this appeal, the Supreme Court has affirmed that case. Vermilya-Brown Co. v. Connell, S. Ct., Dec. 6, 1948. Although different
22 statutes are involved, it would seem clear that that decision is certainly persuasive, if not well-nigh conclusive, authority for reversal here. It is difficult to believe that an air base which is a possession under one Act is a foreign country, no less, under another. Moreover, in the passage quoted above, Congress appears to have recognized the applicability of

the Act to possessions of the United States. While defendant here did not cite or discuss the Connell case, the district judge below attempted to distinguish it, substantially on the ground that the present statute was not crystal clear and that a congressional waiver of sovereign immunity was to be narrowly construed. This doctrine of "niggardly" construction has been cited to this Act, State of Maryland, to Use of Burkhardt, v. United States, D. C. Md., 70 F. Supp. 982, though we have had occasion to criticize such application. Aetna Cas. & Surety Co. v. United States, 2 Cir., — F. 2d —, —. When after many years of discussion and debate Congress has at length established a general policy of governmental generosity toward tort claimants, it would seem that that policy should not be set aside or hampered by a niggardly construction based on formal rules made obsolete by the very purpose of the Act itself. Particularly should this be true as to the broad terms of coverage employed in the basic grant of liability itself.[1]

In our view, however, the statutory exception referring to "a foreign country" is sufficiently precise and explicit that, even without the Connell precedent, this claim must be held included in the coverage of the Act. The language of the grant to the United States of the area is explicitly that of a definite
23 lease of territory for a particular period. As pointed out in the Connell case, there was also incorporated an extensive grant of judicial jurisdiction and of general powers to carry out the purpose of the cession, namely, the establishment of the air bases. There has been much discussion of the somewhat mystic problem as to how far "sovereignty" has been granted; however that may be decided, it would seem that where the United States constructs, operates, and controls an air base so completely as is the actual fact, so obviously in direct line with the intent of the contracting governments, it is on the whole fantastic to consider this territory a foreign country within the meaning of a local statute affecting the relation of this government and private persons.[2] Moreover, in the light of the statutory purpose here the result seems the same. The only ground suggested for this particular exception is that defense of such claims, including the locating, preserving, and use of evidence, would involve too great a practical problem to make waiver of immunity as to them either

[1] Congress has indicated this policy by its amendment in 1947 to destroy the basis of defenses made by the Department of Justice in actions based on statutes in two states locally defined as only punitive and not remedial in nature; the amendment extends recovery to cover these cases. See 28 U. S. C. A. § 931 (a) as amended Aug. 1, 1947, c. 446, § 1, 61 Stat. 722, and H. R. Rep. No. 748, 80th Cong., 1st Sess., U. S. Code Cong. Serv. 1947, p. 1548.

[2] Compare De Lima v. Bidwell, 182 U. S. 1, 180: "A foreign country was defined by Mr. Chief Justice Marshall and Mr. Justice Story to be one exclusively within the sovereignty of a foreign nation, and without the sovereignty of the United States. The Ellen, 2 Gall. 4, Fed. Cas. No. 4,346; Taber v. United States, 1 Story 1, Fed. Cas. No. 13,722; The Adventure, 1 Brock. 235, 241, Fed. Cas. No. 93."

fair or feasible. But if this be the reason for the exception—and it seems to us a reasonable explanation—it surely does not exist in the case of a government-owned-and-controlled airbase. Actually with respect to this very accident, there seem to have been the most complete reports and investigations, as would be usual by the Government agencies in such a situation.

The United States Attorney ably and vigorously urges not only the objections we have already noticed, but others, which nevertheless do not persuade us. There seems no difficulty in the
21 reference of the statute back to the local law of the area, here the Newfoundland law which the plaintiff has alleged and plans to prove. Such reliance on foreign law as the source of rights locally enforced is of course not at all unusual in our courts. Nor does it seem of importance that actually the United States has not established any district courts at this air base. We are now particularly concerned with the existence of the right, which must be established before we need turn to the form of remedy. But the remedy here is fully adequate and complete in the alternative provision of the statute as quoted above, allowing venue at the plaintiff's residence as here. Nor do we see any possibility of political complications. The executive agreement is too carefully drawn, it too well adjusts the various rights of the two countries involved, to make it seem possible that any difficulty can arise if the United States pays private claims made against it for negligence at these air bases. Finally, however, one may regard the much discussed issue of the relative scope of the executive agreement as against the treaty, it cannot be escaped here that the cession of the area has actually been made and the fact of grant and occupancy is not challenged by any one. It would certainly be too refined a thesis to deny this plaintiff recovery on the ground that, though the high contracting parties were quite satisfied, the grant was inoperative because it was made pursuant to executive agreement, and not treaty. Were this thesis to be adopted, then indeed this private litigation might have political, if not international, complications vastly embarrassing, one fancies, to this very defendant here.

Reversed and remanded.

In the United States Court of Appeals for the Second Circuit

LILLIAN SPELAR, AS ADMINISTRATRIX, ETC., PLAINTIFF-APPELLANT

*v.*

UNITED STATES, DEFENDANT-APPELLEE

*Judgment*

Filed December 8, 1948

Appeal from the District Court of the United States for the Eastern District of New York.

Present: Hon. Learned Hand, Chief Judge, Hon. Augustus N. Hand, Hon. Charles E. Clark, Circuit Judges.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed with costs and cause remanded for further proceedings in accordance with the opinion of this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

ALEXANDER M. BELL,
*Clerk.*

[File endorsement omitted]

[Clerk's certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

*Order allowing certiorari*

Filed April 18, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 53655. U. S. Court of Appeals, Second Circuit. Term No. 42. The United States of America, Petitioner, vs. Lillian Spelar, as Administratrix of the Estate of Mark Spelar, Deceased. Petition for writ of certiorari and exhibit thereto. Filed March 8, 1949. Term No. 42 O. T. 1949.